CHAPTER 5 - CIVIL LAW AND MOTION AND DISCOVERY; WRITS AND RECEIVERS; JUDGMENT DEBTOR EXAMINATION

RULE 5.0 LAW AND MOTION AND DISCOVERY CALENDARS

Except as specified below, and unless otherwise ordered by a Case Management judge pursuant to Rule 4.4(2)(0), civil law and motion and discovery proceedings shall be set for hearing in the location of the court in which the action is pending. (See Rule 1.13 and Appendix to Chapter 1 for rules regarding venue and court locations.)

1. Civil law and motion and discovery proceedings for actions pending in the, Southern, and Eastern Divisions shall be set for hearing in Department 31 located on the second floor of the U.S. Post Office Building, 201 – 13th Street, Oakland, in accordance with the procedures set forth in the Appendix to Chapters 4 and 5.

2. Law and motion and discovery proceedings in matters assigned to the Complex Civil Litigation Department shall be set for hearing in that Department in accordance with the Complex Civil Litigation procedures set forth in Appendix to Chapters 4 and 5.

3. Law and motion and discovery proceedings in mandamus actions under the California Environmental Quality Act (CEQA) (Public Resources Code, § 21000 et seq.) shall be set for hearing in the designated CEQA Department in accordance with the procedures set forth in Rule 5.11.

4. Family Law proceedings shall be set in the assigned Family Law Departments.

(Effective 5/19/98; Amended 7/1/99, 1/1/00, 1/01/02, and 1/01/04)

RULE 5.1 FILING OF PAPERS

1. All moving papers and subsequent papers, including return of service, oppositions and replies, may be filed in the Civil Clerk's Office of the location of the Court listed in Rule 1.13.

2. All motions, petitions and applications submitted to the Court shall be accompanied by a form of proposed order, a separate document, which shall be designated "(Proposed) Order...etc." Written opposition to any motion, petition or application shall also be accompanied by a form of proposed order which shall be appropriately designated "(Proposed) Order Denying...etc." All proposed orders shall be served upon opposing counsel and any un-represented parties contemporaneously with reply or opposition papers. The moving party's proposed order shall be lodged with the Court on the date any reply to opposition would be due (whether or not any reply is actually filed).

3. Proofs of service shall include the name of each attorney and the name(s) of the party or parties whom he/she represents.

(Effective 5/19/98; Amended 7/1/99, 1/1/00, 1/01/02, and 1/01/04)

RULE 5.2 CONTINUING OR DROPPING A HEARING; MULTIPLE HEARINGS

1. No hearing may be dropped or continued less than forty-eight (48) hours before the hearing.

2. Motions in the same action may not be set for hearing in different departments within ten (10) court days of each other without prior order of Court.

(Effective 5/19/98)

RULE 5.3 APPLICATIONS FOR ORDERS FOR PAYMENT OF MONEY ON DEPOSIT WITH THE COURT

Form: All declarations and orders for payment of money shall be presented for signature on the form available from the Court (Form #202-1008 Declaration and Order for Payment of Money). *(Effective 5/19/98; Renumbered from Rule 5.4, 7/1/03)*

RULE 5.4 OBJECTIONS TO EVIDENCE

A written objection to evidence in support of or in opposition to a motion shall state the page and line number of the document to which the objection is made, and state the grounds of objection with the same specificity as a motion to strike evidence made at trial. Written objections shall be filed and served no later than 4:30 p.m. on the court day preceding the hearing. This rule does not apply to summary judgments and/or summary adjudications which are governed by CRC 345. *(Effective 5/19/98; Amended, 1/1/00; Renumbered from Rule 5.5, 7/1/03)*

RULE 5.5 MOTION FOR RECONSIDERATION

Any motion for reconsideration must contain a separate statement setting forth the date of the prior motion and the new facts which were not before the Court at the original consideration of the motion. If the party is relying on Blue Mountain Development Co. v Carville (1982) 132 Cal. App. 3d 1005, the party must indicate in the separate statement the justification and explanation for failing to bring the matter up at the prior hearing. *(Effective 5/19/98; Renumbered from Rule 5.6, 7/1/03)*

RULE 5.6 CIVIL CASE RE-CLASSIFICATION

See Code of Civil Procedure § 403.010 et seq. regarding procedure for reclassification of cases. *(Effective 7/1/99; Renumbered from Rule 5.8 to 5.7, 1/1/02 and from Rule 5.7, 7/1/03)*

RULE 5.7 TENTATIVE RULING SYSTEM

The Civil Law and Motion Departments operate tentative ruling systems. Procedures and telephone numbers for each department are listed in the Appendix. Failure to follow the procedure of the Court will result in the tentative ruling becoming the Court's order. *(Effective 5/19/98; Renumbered from Rule 5.9 to 5.8, 1/1/02 and from Rule 5.8, 7/1/03)*

RULE 5.8 ADMINISTRATIVE WRITS

1 In seeking administrative mandamus or prohibition relief, it is not necessary to obtain an alternative writ (section 1088 of the Code of Civil Procedure). The noticed motion procedure may be used.

2. If an alternative writ is sought in the first instance, the petitioner must appear ex parte in the appropriate law and motion department to seek issuance of an order to show cause. The petition must be filed in the civil section of the Clerk's Office.

3. Petitions for writs of mandamus shall state whether the case is filed under C.C.P. Sec. 1085 or C.C.P. Sec. 1094.5. (Effective 5/19/98; Amended 1/1/00; Renumbered from Rule 5.10 to 5.9, 1/1/02 and from Rule 5.9, 7/1/03)

RULE 5.9 TEMPORARY RESTRAINING ORDERS AND ORDERS TO SHOW CAUSE

GENERAL JURISDICTION CIVIL CASES

1. Procedure for Stipulating to Preliminary or Permanent Injunction: Parties who wish to stipulate to entry of a preliminary or permanent injunction should bring to the clerk in the appropriate law and motion department (1) the case file; (2) the stipulation; (3) the original (and a sufficient number of copies to conform) of the Preliminary Injunction or Judgment for Permanent Injunction, which should be a document separate from the stipulation; and (4) the appearance fee for any parties to the stipulation who have not already appeared in the action.

2. Service of Papers Necessary to Keep TRO in Effect: If a TRO is granted, the moving party must serve the TRO, OSC, complaint and all supporting papers as ordered by the Court; if the Court does not specify otherwise, such service must be at least two calendar days before the hearing. To avoid the need for continuances, the Court usually requires that all of the moving papers be personally served at least 12 days before the hearing; that opposition papers be filed and personally served at least six days before the hearing; and that reply papers be filed and personally served two days before the hearing.

3. Proof of Service: Unless service of all of the required papers is accepted by counsel for defendants and so noted by the Court on the OSC or the Minute Order of the ex parte proceedings, proof of service of the papers must be filed directly in the department hearing the OSC no later than 4:30 p.m. of the third court day before the hearing. Failure to do this means that the Court may not prepare the matter further for hearing on the date set for the OSC and on that date the TRO will automatically be ordered dissolved and the OSC discharged.

4. TRO Bond Not Mandatory: A bond is not required for a TRO, but the Court has discretion to require it.

(Effective 7/1/99, Amended 1/1/00; Renumbered from Rule 5.11 to 5.10, 1/1/02 and from Rule 5.10, 7/1/03)

RULE 5.10 APPOINTMENT OF RECEIVERS

1. The court may appoint a receiver pursuant to statute or in conformance with equity practice. Appointment of a receiver may be made either by order after a show cause hearing, by order after a noticed motion for appointment of a receiver, or by ex parte order for appointment of a receiver.

2. Ex parte appointment of a receiver is a drastic remedy used only with extreme caution in cases of great emergency when it is shown the party seeking appointment of a receiver will suffer irreparable harm before a noticed hearing can be held and that no less drastic remedy, such as a temporary restraining order, will prevent the threatened harm. Appointment of a receiver ex parte is contingent upon the filing of an applicant's bond (section 566 of the Code of Civil Procedure) and a receiver's bond (section 567 of the Code of Civil Procedure). The receiver's bond will be fixed in an amount sufficient to cover the value of transferable personal property and cash which the receiver may possess at any time during the expected period of the receivership. Confirmation of the ex parte appointment of a receiver shall be done in conformance with the provisions of the California Rules of Court, rule 351.

3. The proposed order appointing a receiver shall set forth the powers of the receiver and shall designate as precisely as possible what real and personal property will be subject to the receivership estate. The powers of the receiver are limited to those designated by statute and set out in the appointing order. If there is any doubt as to the receiver's authority to take certain

action, he or she should petition the court for instructions. The proposed order shall also specify the rate of compensation of the receiver.

4. Employment of counsel by the receiver requires the approval of the court. In this regard, the application shall comply with the provisions of the California Rules of Court, rule 353(b). In addition, the application and the proposed order must set forth the attorney's hourly rate and a good faith estimate of the number of hours the attorney will expend on behalf of the receivership estate.

5. If the receiver intends to employ a property management company, the proposed order shall specify its rate of compensation. If the proposed property management company is affiliated with the receiver, full disclosure of the affiliation must be made to the parties and the court.

6. Any money collected by the receiver and not expended pursuant to the receiver's duties must be held in the receivership estate until court approval of the receiver's final report and discharge of the receiver, except as otherwise ordered by the court.

7. The receiver is an agent of the court, not of any party to the litigation. The receiver is neutral, acts for the benefit of all who may have an interest in the receivership property, and holds assets for the court, not the plaintiff.

8. Accountings filed in receivership proceedings shall set forth the beginning and ending dates of the accounting period and contain a summary of income, expenses, and capital outlays on a month by-month basis. Receiver's fees and administrative expenses, including fees and costs of property managers, accountants and/or attorneys previously authorized by the court shall be included in the summary, but separately stated. The summary shall be supported by appropriate itemized schedules and evidentiary foundation.

(Effective 5/19/98; Renumbered from Rule 5.12 to 5.11, 1/1/02 and from Rule 5.11, 7/1/0)

RULE 5.11 ACTIONS ARISING UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

[MANDATE ACTIONS UNDER PUBLIC RESOURCES CODE SECTION 21000 ET SEQ. (CEQA)]

1. Where Filed: Mandamus actions challenging an agency decision under the California Environmental Quality Act (Publ. Res. Code, § 21000 et seq.) shall be filed in the Civil Clerk's Office of the court location in which the action is pending. (See Local Rule 1.13 and Appendix to Chapter 1 for rules regarding venue and court locations.) Each action shall be accompanied by an Initial Filing Form (Form 202-19) designating the action as Environmental Law – CEQA (Section 21167.1 et seq. of the Public Resources Code), and shall be assigned to the designated CEQA Department for all purposes.

2. Ordering the Administrative Record: In accordance with Public Resources Code section 21167.6, within 10 business days after the action is filed, petitioners shall personally serve on the appropriate public agency their request for preparation of the administrative record or their notice of election to prepare the record themselves.

3. Mediation: In accordance with Government Code section 66031, within 5 days after the deadline for respondent or defendant to file a response to the action, plaintiff or petitioner shall prepare and lodge with the designated CEQA Department a notice form for the Court's signature inviting mediation. The clerk shall then mail the notice of invitation to the parties.

4. Preparing the Administrative Record:

A. Preparation by the Public Agency:

Within 20 calendar days after receipt of a request to prepare the administrative record, the public agency responsible for such preparation shall personally serve on petitioners a preliminary notification of the estimated cost of preparation, setting forth the agency's normal costs per page, other reasonable costs, if any, the agency anticipates, and the likely range of pages. This notice shall also state, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, shall designate the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and shall provide a listing of dates and times when those documents will be made available to petitioners or any party for inspection during normal business hours as the record is being prepared. This notice shall be supplemented by the agency from time to time as additional documents are located or determined appropriate to be included in the record.

B. Upon receipt of this preliminary notification, petitioners may elect to prepare the record themselves provided they notify the agency within 5 calendar days of such receipt. If petitioners so elect, then within 40 calendar days of service of the initial notice to prepare the administrative record, petitioner shall prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within 7 calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record. The agency shall promptly notify petitioners of any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record.

C. If petitioners do not so elect, then within 40 calendar days after service of the request to prepare the administrative record, the agency shall prepare and serve on the parties a detailed

index listing the documents proposed by the agency to constitute the record and provide a supplemental estimated cost of preparation. Within 7 calendar days of receipt of this notification, petitioners and/or any other parties shall prepare and serve the agency and all parties with a document notifying the agency of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

D. Preparation by Petitioners:

1. Within 20 calendar days after receipt of petitioners' notice of election to prepare the record themselves, the public agency responsible for certification of the record shall personally serve on petitioners a preliminary notification designating, to the extent then known, the location(s) of the documents anticipated to be incorporated into the administrative record, the contact person(s) responsible for identifying the agency personnel or other person(s) having custody of those documents, and the dates and times when those documents will be made available to petitioners or any party for their inspection and copying. This notice shall also state any required photocopying procedures and/or conditions with which petitioners must comply in their preparation of the record. This notice shall be supplemented by the agency as additional documents are located or determined appropriate to be included in the record.

2. Within 40 calendar days after service of petitioner's notice of election, petitioners shall prepare and serve on all parties a detailed index listing the documents proposed by petitioners to constitute the record. Within 7 calendar days of this notification, the agency and/or other parties shall prepare and serve the petitioners and all parties with a document notifying them of any document(s) or item(s) that such parties contend should be added to, or deleted from, the record.

5. Format of Administrative Record:

A. Type of Paper: The Administrative Record (Record) shall be prepared on paper, white or unbleached, of not less than 13-pound weight, 81/2 by 11 inches, using a photocopying process that will produce clear and permanent copies legible to printing. Only one side of the paper shall be used and the margin shall be not less than 11/4 inches on the left side of the page. Alternatively, original copies of the environmental documents may be lodged as part of the Administrative Record, provided that original copies are also provided to all parties in the lawsuit. The pages of the Administrative Record shall be numbered consecutively and bound on the left margin. The use of recycled paper is encouraged.

B. Volume Designation: The Record shall be provided in one or more volumes of not more than 300 pages per volume, separately bound. The cover of each volume of the Administrative Record shall be the same size as its pages and contain the same material as the cover of a brief, but shall be prominently entitled "ADMINISTRATIVE RECORD." The first volume of the Administrative Record shall have at the beginning an index of each paper or record in the order presented in the Administrative Record referring to each paper or record by title or description and the volume and page at which it first appears.

C. Detailed Index: The detailed index listing of the documents agreed to by the parties as the records to be included in the Administrative Record shall be prominently entitled "Detailed Index of Administrative Record" and filed with the Civil Filing Clerk at the court location in which the action is pending. A second, courtesy copy of the Detailed Index of Administrative Record shall be separately lodged in the designated CEQA Department.

D. Organization: The Record should be organized with the following documents (as applicable) at the front of the Record, in the following order:

(1) The Notice of Determination;

(2) The resolution(s) or ordinance(s) adopted by the lead agency approving the project, including any resolution(s) or ordinance(s) adopted in compliance with Public Resources Code sections 21081 and 21081.6;
(3) The Draft or revised Draft Environmental Impact Report and initial study;
(4) The comments received on and the responses to those comments prepared for the Draft Environmental Impact Report or Negative Declaration, including any modifications to the environmental documents and project made after the comment period;
(5) The remainder of the Final Environmental Impact Report (e.g., the Technical Appendices and other technical materials);
(6) The staff reports prepared for the approving bodies of the lead agency;
(7) Transcripts and/or minutes of hearings; and
(8) The remainder of the Administrative Record, preferably in chronological order.

This listing of documents is not intended to dictate the content of the Record, but instead is intended to describe a uniform order for documents typically contained in a Record. The lead agency is encouraged to use tabs to separately identify each of these portions of the Record. The parties are referred to Public Resources Code section 21167.6(e) as to what the Record should contain.

6. Certifying and Lodging the Record:

Upon completion of preparation of the record, it must be certified by the agency before it is filed with the Court. If the agency has prepared the record, it shall make such certification and shall personally serve and lodge the record in the designated CEQA department no later than 60 days after the request. If the petitioners have elected to prepare the record, petitioners must transmit it to the agency for certification. After such certification, petitioners shall prepare and file a Notice of Lodgment of Administrative Record with the Civil Filing Clerk at the court location in which the action is pending, and personally serve and lodge the record and Notice of Lodgment in the designated CEQA Department no later than 60 days after service of the notice of election to prepare. If the agency refuses to make a complete certification, it shall make a partial certification, specifying any alleged defects in the record. Any extension of the 60-day time period may be obtained by filing a stipulation of the parties and obtaining court approval of the extensions prior to the expiration of the 60-day period. Also, an extension may be obtained from the Court upon a properly noticed hearing scheduled prior to the expiration of the 60-day period.

7. Disputes Regarding the Contents of the Administrative Record:

Once the administrative record has been filed, any disputes about its accuracy or scope should be resolved by appropriate notice motion. For example, if the agency has prepared the administrative record, petitioners may contend that it omits important documents or that it contains inappropriate documents; if the petitioners have prepared the record, the agency may have similar contentions. A motion to supplement the certified administrative record with additional documents and/or to exclude certain documents from the record may be noticed by any party and should normally be filed concurrently with the filing of petitioner's opening memorandum of points and authorities in support of the writ. Opposition and reply memoranda on the motion should normally be filed with the opposition and memoranda, respectively, regarding the writ. The motion should normally be calendared for hearing concurrently with the hearing on the writ.

8. Notice of Hearing:

The petitioner shall notice a hearing date on the petition for writ of mandate, consistent with Public Resources Code section 21167.4. The hearing shall be noticed for not later than 160 days from the date of filing the petition.

9. Briefing Schedule and Length of Memoranda:

A. Unless otherwise ordered by the Court, petitioner shall file directly in the designated CEQA department and serve personally, by overnight mail or, if previously agreed, by fax, an opening memorandum of points and authorities in support of the petitioner within 30 days from the date the administrative record is served,

B. Respondent and Real Party in Interest shall file directly in the designated CEQA department and serve personally, by overnight mail or, if previously agreed, by fax, opposition points and authorities, if any, within 30 days following service of petitioner's memoranda of points and authorities,

C. Petitioner shall have 20 days from service of the opposition's points and authorities to file directly in the designated CEQA department and serve personally, by overnight mail or, if previously agreed, by fax, a reply memorandum of points and authorities,

D. The parties may agree upon a shorter time frame for briefing by written stipulation filed with the Court,

E. Any request for permission to file a memorandum in excess of the 15 page limit shall be made pursuant to Rule 313(d), California Rules of Court.

F. Settlement Meeting: The initial notice required by Public Resources Code section 21167.8 shall provide that, if the parties agree, the first meeting will be continued so as to take place no later than 35 days after the administrative record is served. If the parties do not agree to this continued first meeting date, then the first meeting shall take place in accordance with Public Resources Code section 21167.8 and a second meeting is ordered to take place within 5 days after the administrative record is served. The parties shall agree as to the time and place of any meeting pursuant to Public Resources Code section 21167.8. Other meetings may be scheduled by the parties. The statement of issues required by 21167.8(f) shall identify those portions of the Administrative Record that are directly related to the contentions and issues remaining in controversy. The Court will utilize these statements in focusing on the legal and factual contentions and issues to be resolved. However, such contentions and issues must be consistent with the pleadings to be properly resolved by the Court.

10. Trial Notebook:

Petitioner shall prepare a trial notebook which shall be filed with the designated CEQA department 14 days before the date of the hearing. The trial notebook shall consist of the petition, the answer(s), the briefs, any motions set to be heard at trial, the statement of issues, and any other document(s) agreed upon by the parties.

(Effective 7/1/99; Amended 01/01/00; Renumbered from Rule 5.13 to 5.12, 1/1/02 and from Rule 5.12, 7/1/03)

RULE 5.12 JUDGMENT DEBTOR EXAMINATION PROCEEDINGS

A. Place of Filing: All applications for orders for the appearance and examination of judgment debtors or other persons shall be in writing and presented to the clerk in the court location where the judgment was entered.

B. Setting Hearings: Judgment debtor examination dates are obtained by submitting the appropriate fees, an original and two copies of the order for appearance of judgment debtor, and a stamped, self-addressed envelope or messenger service return slip to the appropriate civil clerk's office. Conformed copies with the appearance date, time, and place will be returned to the judgment creditor for service.

C. Proof of Service: Proof of service must be filed no later than five court days before the date of the hearing. However, if the person ordered to appear does appear and is ready to proceed, the examination may be conducted, with or without proof of service having been timely filed, at the discretion of the court.

D. Appearance at Examination: Upon the call of the calendar, if the parties appear, the examination must proceed at once, unless a continuance is ordered by the court. If the person ordered to appear does appear and the moving party fails to appear, the proceeding may, at the discretion of the court, be continued to another day or be dismissed without costs and with such additional orders as are appropriate. Appropriate orders may include an order that no future order shall issue as to the person who did appear except upon a showing of new facts and a satisfactory explanation being made to the court for the moving party's failure to appear. If such future order is granted, it shall be made on such terms and conditions as the court deems just and appropriate.

E. Nonappearance of Party to be Examined: If the party to be examined fails to appear at the time and place set for examination, a bench warrant may issue requiring attendance forthwith, provided the moving party complies with subdivision "F" of this rule within 30 days after the examination date.

F. Bench Warrants of Attachment: If a judgment debtor fails to appear for hearing as ordered, the judgment creditor may request a bench warrant of attachment. The judgment creditor must file with the civil clerk's office the following items before the bench warrant of attachment shall issue:

1. Sheriff's instructions, fully completed, stating the location where the defendant may be served (forms available in Sheriff's Office, original only required);

2. Check made payable to the "Sheriff of Alameda County" for service fees; and,

3. A bench warrant of attachment form.

The above documents shall be filed within thirty (30) days of the order directing or granting the issuance of the bench warrant of attachment. If the documents are not filed within thirty (30)

days following the order for issuance of the bench warrant of attachment, the moving party must apply to the Court for an order for appearance of judgment debtor.

G. Continuances: One or more continuances of a judgment debtor examination may be allowed upon stipulation of all parties or their attorneys joined in by the person or entity ordered to appear and approved by the court, or upon good cause shown.
(Effective 7/1/02; Renumbered from Rule 4.13, 7/1/03)